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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

Conservatorship of the Person and Estate of
JUDE WILLIAM TINSLEY.

JANICE LINGENFELTER,

Plaintiff and Appellant,

v.

HELEN WILSON, as Conservator, etc.,

Defendant and Respondent.

F058780

(Super. Ct. No. 584764)

OPINION

APPEAL from an order of the Superior Court of Fresno County. Debra Kazanjian, Judge.

Janice Lingenfelter, in propria persona, for Plaintiff and Appellant.

Perkins, Mann & Everett, Curtis D. Rindlisbacher for Defendant and Respondent.

-ooOoo-

Jude Tinsley, who is disabled, was removed from the custody of his mother, Janice Lingenfelter, in 1980 by Child Protective Services. In 1982, Jude's paternal grandmother, Helen Wilson, and father, Larry Tinsley, were awarded joint legal and physical custody. After Jude turned 18 in 1997, Wilson was appointed conservator over Jude's person and estate. Soon thereafter, Lingenfelter alleged Jude's father had

molested him. Police investigated the allegations, concluded there was no clear evidence to determine whether a violation had occurred, and forwarded the police report to Adult Protective Services, which did not find any evidence of molestation. In 1999, Lingenfelter filed a petition requesting her appointment as conservator, again alleging that Tinsley had sexually abused Jude and asserting a blood test had never been done to prove Tinsley was Jude's father. After a court investigator reviewed Lingenfelter's allegations and interviewed those involved, the investigator recommended Wilson continue as Jude's conservator. The court subsequently denied Lingenfelter's petition.

In April 2009, Lingenfelter, in propria persona, filed an affidavit in probate court in which she stated she believed Jude needed counseling due to the prior allegations of sexual abuse and requested a paternity test to see if Tinsley is Jude's father. Lingenfelter asserted she had reported the abuse to many agencies and had evidence to substantiate the abuse, but the social worker had ignored and dismissed her complaints, and she was requesting counseling for her son. In May 2009, Lingenfelter filed in probate court a document entitled "Petition Probate Hearing Order to Show Cause," in which she (1) requested a hearing for Jude, (2) stated she believed Jude needed counseling and an attorney because his father had abused him, (3) requested a paternity test as she believed Tinsley was not Jude's biological father, and (4) stated that Wilson had filed a lawsuit in Jude's name without notice to her. A hearing date on the petition was set for July 8, 2009 at 9 a.m. In June 2009, Wilson filed an objection to the petition. While Wilson's attorney appeared at the July 8, 2009 hearing on the petition, apparently Lingenfelter did not. The probate court denied the petition and dismissed it with prejudice.

Lingenfelter appeals in propria persona from the probate court's order denying her petition and dismissing it with prejudice. In briefing that primarily recounts her claims that Jude has been abused, Lingenfelter appears to challenge the probate court's refusal to grant her another hearing on the petition after she failed to appear at the scheduled hearing. Lingenfelter asserts in her opening brief that she was 30 minutes late for the

hearing on the petition due to an inadvertent mix-up of appointments, court was over when she arrived for the hearing, and she asked the court for another hearing, but the court denied her request. Lingenfelter argues the denial of her request was a “travesty of justice because of the seriousness of the hearing.”

We cannot tell from the record before us why the court denied and dismissed the petition below. Key portions of the record are missing or were not transcribed. Critically, the objection Wilson filed is not included in the clerk’s transcript and the record does not contain a reporter’s transcript of the July 8, 2009 hearing on the order to show cause, from which the dismissal order emanated. We have only the court’s minute order, which indicates that Wilson’s attorney was present, but does not indicate whether anyone appeared or did not appear on Lingenfelter’s behalf, as neither box under the term “Petitioner(s),” which states “Not Present” and “Present,” is checked. In addition, the minute order states only that the petition is denied before court trial and the petition is dismissed with prejudice before court trial, and does not give a reason for the denial or dismissal. Although Lingenfelter asserts she later asked the court to reschedule the hearing, there is nothing in the record to show that such a request was made or that the court denied it. While Lingenfelter challenges the prior conclusions that there was no evidence of abuse and asserts the matter has not been adequately heard, she does not formulate an argument challenging the *court’s* dismissal of the petition, other than to state that dismissal was a travesty of justice. We conclude Lingenfelter has failed to show that the court abused its discretion or otherwise erred in dismissing her action.

DISCUSSION

We reiterate some of the basic rules governing appellate review: As a general rule, “an appealed judgment or order is *presumed to be correct*. ‘All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’” (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2008) ¶ 8:15, p. 8-5 (Eisenberg), citing, among

others, *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) Also, “[a]ppellant has the burden of overcoming the presumption of correctness and, for this purpose, must provide an *adequate appellate record* demonstrating the alleged error.” (Eisenberg, ¶ 8:17, p. 8-5; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) “Appellant’s burden also includes the obligation to present *argument and legal authority* on *each point* raised. This requires more than simply stating a bare assertion that the judgment, or part of it, is erroneous and leaving it to the appellate court to figure out why; it is not the appellate court’s role to construct theories or arguments that would undermine the judgment and defeat the presumption of correctness.” (Eisenberg, ¶ 8:17.1, pp. 8-5 to 8-6.) “When appellant asserts a point but fails to support it with reasoned argument and citations to authority, the court may treat it as *waived* and pass it without consideration.” (Eisenberg, ¶ 8:17.1, p. 8-6.)

Lingenfelter has failed to present an argument sufficient to overcome the presumption of correctness and does not support her general assertion that the court erred in dismissing her petition with reasoned argument. Moreover, the record provided by Lingenfelter is patently inadequate to support any claim of error. In such circumstances, we must uphold the order. We acknowledge that Lingenfelter is representing herself on appeal. While under the law one may act as her own attorney, when a litigant does so, she is held to the same restrictive rules of procedure and evidence as an attorney. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639; *Monastero v. Los Angeles Transit Co.* (1955) 131 Cal.App.2d 156, 160-161.)

DISPOSITION

The probate court's July 8, 2009 order is affirmed. Respondent is awarded her costs on appeal.

Gomes, J.

WE CONCUR:

Ardaiz, P.J.

Levy, J.